

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

**PARK HARVEY APARTMENTS,
LLC,**

Plaintiff,

v.

**PARK HARVEY LLC;
HARVEY & PARK, LLC OF
FLORIDA; BARBARA S.
BROOKES, TRUSTEE OF THE
BARBARA S. BROOKES TRUST
UNDER SCHONWALD FAMILY
TRUST,**

Defendant.

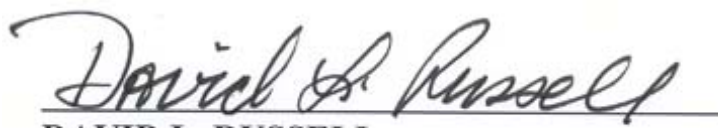
CIV-07-450-R

ORDER

This matter comes before the Court on the Motion to Dismiss, filed by Defendants, with regard to Plaintiff's second, third and fourth causes of action. Plaintiff responded in opposition to the motion. Having considered the parties' submissions, the Court hereby gives notice to the parties of its intention to convert the motion to dismiss to a motion for summary judgment, in part because the Court has had substantial exposure to evidence in this case as a result of the parties' cross motions for summary judgment, and setting aside consideration of those materials would be difficult if not impossible in this case .¹ If the parties wish to submit evidentiary materials in support of their respective positions, they are hereby ordered to do so within twenty days.

¹ The Court recognizes that this conversion is somewhat outside the scope of Rule 12(b), which contemplates conversion when one or more parties has provided and relied on evidentiary materials.

IT IS SO ORDERED this 17th day of March 2008.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE